

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Paul Baron	Team: Team # 4	CCRB Case #: 200902835	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 02/24/2009 3:40 PM	Location of Incident: Foster Avenue at Argyle Road	Precinct: 70	18 Mo. SOL 8/24/2010	EO SOL 8/24/2010	
Date/Time CV Reported Tue, 02/24/2009 10:31 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 02/24/2009 10:31 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Dudley Ewald	17310	943216	070 PCT
2. POM David Bowman	16034	944015	070 PCT
3. POM Joseph Wernersbach	06302	939682	070 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Colleen Leonard	04226	919293	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM David Bowman	Abuse: PO David Bowman frisked § 87(2)(b)	
B.POM Joseph Wernersbach	Abuse: PO Joseph Wernersbach frisked § 87(2)(b)	
C.POM Joseph Wernersbach	Abuse: PO Joseph Wernersbach searched § 87(2)(b)	
D.POM David Bowman	Abuse: PO David Bowman searched § 87(2)(b)	
E.POM Dudley Ewald	Discourtesy: PO Dudley Ewald spoke rudely to § 87(2)(b)	

Synopsis

§ 87(2)(b) reported that on February 24, 2009, at approximately 3:40 PM, he rode his bicycle on the sidewalk, was approached by a marked NYPD van, and an officer told him to stop. Four uniformed officers exited the van and approached § 87(2)(b). PO David Bowman frisked § 87(2)(b) (Allegation A). PO Joseph Wernersbach allegedly patted down § 87(2)(b)'s legs and pockets (Allegation B). PO Wernersbach allegedly entered § 87(2)(b)'s front pockets and removed a cell phone (Allegation C). PO Bowman allegedly searched § 87(2)(b)'s back pockets, removed § 87(2)(b)'s wallet and unzipped § 87(2)(b)'s backpack and looked inside (Allegation D). § 87(2)(b) asked the officers why he was being searched. PO Dudley Ewald allegedly told § 87(2)(b) that he was "being a dick" (Allegation E). PO Bowman issued § 87(2)(b) a summons § 87(2)(a) 160.50.

§ 87(2)(g)

§ 87(2)(b)

Summary of Complaint

On February 24, 2009, § 87(2)(b) filed a complaint on the CCRB call processing system against NYPD officers. On February 26, 2009, § 87(2)(b) provided a phone statement. On March 27, 2009, § 87(2)(b) was interviewed at the CCRB. § 87(2)(b) is a § 87(2)(b) male, with brown hair, brown eyes and dark colored skin, who is 5'9" and weighs 210 pounds.

On February 24, 2009, at approximately 3:40 PM, § 87(2)(b) rode his bike eastbound on Foster Avenue. As he approached Argyle Road, there was a car double parked on the street. To get around it, § 87(2)(b) rode his bike on to the sidewalk. When § 87(2)(b) went on to the sidewalk, officers in a marked NYPD van turned on their sirens and drove up to § 87(2)(b). An officer told him to stop and he complied. Four uniformed officers exited the van and approached § 87(2)(b). PO Joseph Wernersbach, PO David Bowman and Sgt. Colleen Leonard were identified through investigation; PO Ewald was identified by his name and shield number. The officers gathered around § 87(2)(b) and started to frisk him; no commands had been issued after he was stopped. He asked why he was being "searched" and PO Wernersbach told him to shut his mouth.

PO Wernersbach and PO Bowman patted down § 87(2)(b)'s legs and pockets. § 87(2)(b) had been wearing baggy jeans, a baggy hooded jacket, a "skull" cap and a backpack. PO Wernersbach asked § 87(2)(b) what was in his front right pocket and § 87(2)(b) stated it was his cell phone. PO Wernersbach entered § 87(2)(b)'s front pockets and removed the cell phone, and told him that they thought it could have been a weapon. PO Bowman searched § 87(2)(b)'s back pockets and removed § 87(2)(b)'s wallet. § 87(2)(b) heard and felt, but did not see, PO Bowman unzip and search inside of his backpack, which contained several books. § 87(2)(b) did not feel any contents of his backpack get removed. The officers finished searching § 87(2)(b) after five minutes and they gave him back his wallet and cell phone.

§ 87(2)(b) again asked the officers why he was being searched. PO Ewald told § 87(2)(b) that he was “being a dick,” and because of that he was going to get a summons. § 87(2)(b) never cursed or raised his voice at the officers. An officer asked for § 87(2)(b)'s ID and he provided it. § 87(2)(b) observed PO Bowman write his summons. The name on the summons was PO Bowman, Tax ID# 944015, and the summons § 87(2)(a) 160.50. Three officers arrived in another marked van while § 87(2)(b)'s summons was being written, but after PO Ewald had called § 87(2)(b) a “dick.” There were no civilian witnesses to the incident.

Results of Investigation

Officer Identification

PO David Bowman issued § 87(2)(b) a summons § 87(2)(a) 160.50; his memo book indicated he was partnered with PO Dudley Ewald. Sgt. Colleen Leonard recorded the summons in her memo book, which identified PO Joseph Wernersbach as her partner.

Officer Statements

CCRB Interview- PO Joseph Wernersbach

On August 24, 2009, the CCRB interviewed PO Joseph Wernersbach, who is assigned to the 70th Precinct. PO Wernersbach is a § 87(2)(b)-year-old white male with blonde hair and brown eyes who is 5’10” and weighs 180 pounds. On February 24, 2009, PO Wernersbach worked from 10:00 AM to 6:00 PM and was assigned to the Conditions Squad with Sgt. Leonard. He was in uniform and was the operator of a marked vehicle, #5233. PO Wernersbach had no relevant memo book entries.

On February 24, 2009, at approximately 3:40 PM, PO Wernersbach observed § 87(2)(b) riding his bike on the sidewalk in a high pedestrian traffic location. The location is a conditions area because of ongoing robberies and graffiti. § 87(2)(b) had not taken any actions to indicate he was or had been making graffiti. PO Wernersbach stopped the vehicle, and he and Sgt. Leonard exited and approached § 87(2)(b) along with PO Bowman and PO Ewald, who had been following in a separate vehicle. The officers stopped § 87(2)(b) and asked him for his identification. § 87(2)(b) was visibly irate and did not immediately provide his ID. It was explained to § 87(2)(b) that he was stopped for riding his bike on the sidewalk. PO Bowman frisked § 87(2)(b) around his waistband. No weapons were recovered. PO Wernersbach did not observe PO Bowman or any other officer enter § 87(2)(b)'s pockets. PO Wernersbach did not frisk or search § 87(2)(b). § 87(2)(b) questioned the officers why he was stopped and why he was frisked.

Eventually § 87(2)(b) took out his identification on his own from his pants pocket, and provided it to PO Wernersbach, who walked back to the van and ran § 87(2)(b)'s name for warrants. The search for warrants came back negative. PO Wernersbach did not observe any officer unzip or search inside of § 87(2)(b)'s backpack. PO Bowman followed PO Wernersbach to the van, and wrote § 87(2)(b) a summons. PO Wernersbach did not hear PO Ewald call § 87(2)(b) a “dick.” PO Bowman returned and issued § 87(2)(b) a summons § 87(2)(a) 160.50, and the officers left the location. § 87(2)(b) was calm by the time he was issued the summons.

Stop and Frisk Report filled out by PO David Bowman

The report stated that § 87(2)(b) was stopped for five minutes on suspicion of making graffiti. He was frisked but not searched. § 87(2)(b) was angry and asked why he was stopped. The circumstances leading to the stop were: actions indicative of acting as a lookout, wearing clothes commonly used in commission of crime, and furtive movements. Additional factors were: area has high incidence of reported offense, time of day corresponding to criminal activity, and

proximity to scene of suspected offense. The basis for the frisk was furtive movements and inappropriate attire, possibly concealing a weapon.

CCRB Interview- PO David Bowman

On August 24, 2009, the CCRB interviewed PO David Bowman, who is assigned to the 70th Precinct. PO Bowman is a § 87(2)(b) -year-old white male with brown hair and blue eyes who is 6' and weighs 180 pounds. On February 24, 2009, PO Bowman worked from 9:30 AM to 6:05 PM and was assigned to the Conditions Squad with PO Ewald. He was in uniform and was assigned to a marked vehicle. PO Bowman was re-interviewed on December 18, 2009. Both statements are combined below.

Relevant memo book entries

1540- 1 male stopped at Foster and Argyle

1550- Summons issued and 250 prepared

On February 24, 2009, at 3:40 PM, PO Bowman observed § 87(2)(b) riding his bicycle on the sidewalk. PO Bowman, PO Ewald, PO Wernersbach and Sgt. Leonard exited their two vehicles and approached § 87(2)(b). Officers explained to § 87(2)(b) why he was stopped and asked him to provide his identification. § 87(2)(b) became irate and angry. § 87(2)(b) stated that PO Bowman had no right to stop him in a loud voice and cursed at the officers. § 87(2)(b) repeatedly moved his hands around his waistband. PO Bowman did not recall if he observed any bulges on § 87(2)(b)'s waistband, however, he could not see § 87(2)(b)'s waistband because he was wearing baggy clothing that covered his waist. The furtive movements PO Bowman marked off on the stop and frisk report referred to § 87(2)(b) moving his hands around his waistband. PO Bowman stated that when an individual is stopped by officers, they are usually not moving their hands around, which combined with the baggy clothing worn by § 87(2)(b) caused him to fear for his safety. PO Bowman only patted his hands over § 87(2)(b)'s waistband to feel for weapons. No hard objects or weapons were found. PO Bowman did not enter any of § 87(2)(b)'s pockets and did not ask § 87(2)(b) about the contents of his pockets.

§ 87(2)(b) matched the physical description of individuals that had committed graffiti in the area; additionally his location and the time of the stop matched that of previous graffiti crimes. The graffiti is often gang related, and PO Bowman stated that based on his experience, most of those gang members are armed. PO Bowman frisked § 87(2)(b) before questioning him about graffiti, and only frisked him for weapons, not for graffiti instruments. PO Bowman did not recall if any other officer frisked § 87(2)(b). PO Bowman did not recall if § 87(2)(b) wore a backpack, and did not search any bags at the location. § 87(2)(b) provided his ID to PO Bowman, who went back to the van with PO Wernersbach to run § 87(2)(b)'s name for open warrants. § 87(2)(b) calmed down after he was explained why he was being issued a summons. PO Bowman did not hear PO Ewald or any other officer call § 87(2)(b) a "dick." PO Bowman wrote and issued § 87(2)(b) a summons § 87(2)(a) 160.50

CCRB Interview- PO Dudley Ewald

On October 28, 2009, the CCRB interviewed PO Dudley Ewald, who is assigned to the 70th Precinct. PO Ewald is a § 87(2)(b) -year-old white male with brown hair and brown eyes who is 5'9" and weighs 180 pounds. On February 24, 2009, PO Ewald worked from 9:30 AM to 6:05 PM and was assigned to the Conditions Squad with PO Bowman and PO Wernersbach. He was in uniform and was assigned to a marked vehicle, #5233, as the recorder. His memo book entries matched those by PO Bowman.

On February 24, 2009, at approximately 3:40 PM, PO Ewald was inside of a police vehicle being operated by PO Bowman. PO Bowman observed § 87(2)(b) riding his bike on a sidewalk at Foster Avenue and Argyle Road. PO Bowman and PO Ewald exited their vehicle and told § 87(2)(b) to stop and he complied. The officers, joined by PO Wernersbach, approached § 87(2)(b) and told him he had committed a summonsable offense. § 87(2)(b) was shocked that he had been stopped and appeared nervous. PO Ewald did not recall § 87(2)(b) yelling, but stated he talked back and forth with the officers. PO Ewald did not observe § 87(2)(b) making any gestures that appeared to be threatening to him or any of the other officers. PO Bowman obtained § 87(2)(b)'s New York State identification card and returned to his vehicle with PO Ewald to run the § 87(2)(b)'s ID through the Mobile Data Terminal, which yielded negative results. PO Ewald did not know how PO Bowman obtained § 87(2)(b)'s ID. PO Ewald stated that the area has a high frequency of graffiti in the location, usually committed by kids aged 16 to 22. § 87(2)(b) had a backpack and looked like a student, so the officers believed he may have observed or made graffiti in the area. PO Ewald did not observe an officer frisk § 87(2)(b). He did not see an officer search § 87(2)(b). PO Ewald never saw § 87(2)(b)'s backpack opened up. PO Ewald spoke with § 87(2)(b) but did not recall specifically what he said. PO Ewald never called § 87(2)(b) a dick and did not hear any other officer do so.

CCRB Interview- Sgt. Colleen Leonard

On August 24, 2009, the CCRB interviewed Sgt. Colleen Leonard, who is assigned to the 70th Precinct. Sgt. Leonard is a § 87(2)(b)-year-old white female with red hair and blue eyes who is 5'5" and weighs 110 pounds. On February 24, 2009, Sgt. Leonard worked from 9:20 AM to 6:17 PM and was assigned to the Conditions Squad with PO Wernersbach. She was in uniform and was assigned to a marked jeep, #5233. Her memo book entries matched those by PO Bowman.

On February 24, 2009, at approximately 3:40 PM, Sgt. Leonard was with PO Wernersbach, PO Ewald and PO Bowman. She did not remember if they were all in one vehicle. Sgt. Leonard observed § 87(2)(b) riding his bike on the sidewalk and the officers approached and stopped him. § 87(2)(b) was asked for his wallet and his ID was run for warrants. It came up negative. § 87(2)(b) was "nasty" and irate while he was stopped, but Sgt. Leonard did not remember specifically what he said. Sgt. Leonard did not recall if § 87(2)(b) was frisked or searched. She did not recall if § 87(2)(b) had a backpack. Sgt. Leonard did not hear any officer call § 87(2)(b) a "dick." PO Bowman issued § 87(2)(b) a summons.

§ 87(2)(b)'s Summons Disposition

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)'s Criminal Conviction History

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)'s CCRB History (enc. 3)

§ 87(2)(b) has not filed any previous CCRB complaints.

Subject Officer's CCRB History (enc. 2)

PO Bowman has no substantiated allegations of misconduct in his two year tenure at the NYPD. Neither PO Wernersbach nor PO Ewald has any substantiated allegations of misconduct in their three years tenure at the NYPD.

Conclusions and Recommendations

Pleading of Allegations

§ 87(2)(b) identified PO Ewald as the officer that cursed at him from reading his name off his shield and stated that PO Ewald did not frisk or search him. PO Bowman was identified based on his physical description and acknowledged frisking § 87(2)(b) PO Wernersbach was identified as the only other male officer present at the incident.

Undisputed Facts

It is undisputed that § 87(2)(b) was riding his bicycle on the sidewalk when he was stopped by PO Wernersbach, PO Ewald, PO Bowman and Sgt. Leonard. § 87(2)(b) was subsequently issued a summons § 87(2)(a) 160.50. It is undisputed that PO Bowman frisked § 87(2)(b)

Disputed Facts

§ 87(2)(b), § 87(2)(g)

Assessment of Evidence

§ 87(2)(b) alleged that he was frisked and searched by PO Bowman and PO Wernersbach. PO Bowman stated he was the only officer to frisk § 87(2)(b) PO Wernersbach stated that PO Bowman was the only officer to do so. Neither admitted to searching § 87(2)(b) PO Ewald and Sgt. Leonard did not observe § 87(2)(b) get frisked or searched. The stop and frisk report only indicated that § 87(2)(b) was frisked and not searched. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that PO Ewald called him a “dick.” None of the interviewed officers heard PO Ewald or any other officer make this comment. PO Ewald confirmed that he spoke with § 87(2)(b) but did not recall what he said. § 87(2)(b), § 87(2)(g)

A) Abuse of Authority: PO David Bowman frisked § 87(2)(b)

PO Bowman stated that he frisked § 87(2)(b) because of his demeanor and his furtive movements. PO Bowman alleged that § 87(2)(b) moved his arms around his waistband while cursing and yelling at the officers. Additionally, PO Bowman could not clearly see § 87(2)(b)'s waistband because it was covered by baggy clothing (which was confirmed by § 87(2)(b)). PO Bowman stated that § 87(2)(b)'s movements toward his waistband, combined with his baggy clothing, caused him to fear for his safety. PO Bowman stated he only frisked § 87(2)(b)'s waistband, which § 87(2)(b) and PO Wernersbach confirmed. PO Bowman also indicated that § 87(2)(b) fit the physical description of youths that had been committing gang related graffiti in the area and that many of these gang members carried weapons. All the other officers confirmed that § 87(2)(b) acted irate and argued back and forth with the officers; § 87(2)(b) acknowledged repeatedly questioning the officers about their actions. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) The NYPD Street Encounters Legal Guide states that officers may only frisk an individual for a deadly weapon when the MOS reasonably suspects that he is in danger of physical injury. § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

B) Abuse of Authority: PO Joseph Wernersbach frisked § 87(2)(b)

C) Abuse of Authority: PO Joseph Wernersbach searched § 87(2)(b)

D) Abuse of Authority: PO David Bowman searched § 87(2)(b)

E) Discourtesy: PO Dudley Ewald spoke rudely to § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Investigator: Paul Baron

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: